IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 123 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

P M VARGHESE

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 123 of 2000

M/S THAKKAR ASSOC. for Petitioners No. 1-2

Ms. HANSA PUNANI Ld. APP for Respondent No. 1

MR HM PRACHCHHAK for Respondent No. 2

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 23/01/2002

ORAL JUDGEMENT

The petitioners are the original accused of criminal case registered in the Court of Chief Judicial

Magistrate, Kutchch at Bhuj on the basis of complaint filed by respondent no. 2 for the offence punishable under sec. 447, 114 of IPC and also under sec. 135 of Bombay Police Act. The petitioner no. 1 at the relevant point of time was Assistant Manager, Vigilance, with Food Corporation of India i.e. FCI, Gandhidham and petitioner no. 2 was also Assistant Manager, Personal & Industrial Relations, with FCI, Gandhidham.

The respondent no. 2 filed a private complaint in the Court of Chief Judicial Magistrate, district Kutchch at Bhuj and the same was sent for investigation under sec. 156(3) of CrPC to Police Inspector, City Police Station, Bhuj and was directed to submit his report on 17.10.1994. The police submitted its first report to the Ld. Chief Judicial Magistrate and on the strength of the evidence collected by the police, the police had prayed to grant B-Summary. After hearing the complainant, the Ld. Chief Judicial Magistrate held that the investigation carried out by the Investigating Officer is incomplete and the same needs some further investigation and by accepting the contentions raised by the original complainant- respondent no. 2, sent the complaint for further inquiry by the Police Inspector, City Police Station, Bhuj.

In the month of November, 1997 the Police Inspector, City Police Station, Bhuj submitted a detailed report in the Court of Chief Judicial Magistrate and asked B-Summary in the complaint. Once again, the Court issued notice to the complainant and directed the complainant to show-cause as to why the report of B-Summary filed by the Police should not be accepted. The complainant appeared through his counsel and submitted an application of resistance and after hearing the counsel appearing for the original complainant, Ld. J.M.F.C. who was entrusted with the proceedings accepted the contentions of the complainant and ordered issuance of process i.e. summons for the offences punishable under sec. 447, 506(1) read with sec. 114 of IPC. The order of issuance of process is under challenge in this application before this Court.

I have considered the rival contentions and it would be proper to mention certain undisputed facts emgerging from the record.

1. Both the accused are serving and were serving with FCI department, Gandhidham and the complainant was also an employee of FCI department.

2. Respondent no. 2- complainant has erected Bungalow no. 107-A in the area known as Lotus Colony, at Bhuj and he was granted housing loan facility (H.B.A.) by FCI.

3. The complainant had requested the department on 8.6.1993 to permit him to sale the very bungalow No. 107-A and he had specifically prayed that he intends to sale this bungalow to one Shri KJ Dhruva and to pay up he HBA loan.

4. The permission to sale Bungalow was granted by the competent authority in the month of June, 1993 itself.

5. The date of incident is 14th September, 1994 and on that day the petitioner was not in the town Bhuj and it is not on record that it was a non-working day or holiday.

6. The complainant had deposited sum of Rs. 1,56,400/ in cash with FCI department and had cleared house building advance loan.

7. Till the date of complaint filed by respondent no. 2, the respondent no. 2 had not submitted any writing to the department about the source of the amount received. According to Mr. Prachchak learned counsel appearing for the respondent no. 2 that respondent no. 2 was not supposed to disclose the source of the amount paid in cash by respondent no. 2 in the FCI department.

8. The department had framed a committee to enquire as to whether the complainant Ashok P. Devnani has sold out his bungalow as per the permission asked by him and granted by the department.

9. On 14th September, 1994, Bungalow No. 107-A, Lotus Colony, Bhuj was visited by the present petitioners and made some inquiries.

10. Alleged offence is committed o!n 14.9.94 and the complainant is filed on! 17.9.1994 as a private complaint before Ld. Chief Judicial Magistrate, Bhuj.

The say of the petitioners is that the petitioners are serving as Assistant Manager, Vigilance FCI, and Assistant Manager, Personnel & Industrial

Relations, FCI at Gandhidham and they had visited the Bungalow of complainant in their official capacity and in reference to the inquiry instituted against the complainant regarding repayment of his house building advance and, there was no mens ria in visiting or inspecting the house of complainant. It is contended that the complainant was very much annoyed with the action of the committee and especially a visit without informing him well in advance and, therefore, with a view to take revenge and to create obstacles in the process of departmental inquiry, he has filed this false complaint of criminal trespass. It is also the case of the petitioners that their visit or entry in the bungalow even if it is accepted to be true the same was in discharge of their official duty and in the capacity of responsible officer of FCI and, therefore, the fact of intention to commit any offence on the part of petitioners should not be inferred in absence of specific case and evidence and, therefore, the police had rightly filed B-Summary report. According to Mr. HN Joshi learned counsel appearing for M/s. Thakkar Asso. submits that the order of issuing process is apparently inconsistent to the papers of investigation and the report filed by the agency and it is mainly based on surmises and inferences. It is one of the reason given by the ld. Magistrate that as the accused had visited the house of complainant i.e. Bungalow No. 107-A in his absence and have entered the house without prior permission, it can be inferred that there is a prima-facie case against the accused. It is also recorded by the ld. Magistrate that they had no business to ask anything to any third person present in the Bungalow. Ld. Magistrate has considered as one important circumstances, that no male members including the complainant was present. The officers working in the Personnel Department or Vigilance Department were undisputedly trying to collect the evidence for the departmental inquiry instituted or otherwise contemplated cannot be said to be unauthorized or otherwise illegal. It is on record that when Bungalow No. 107-A, Lotus Colony, was inspected on 14th September, 1994, two female members were found present in the Bungalow and one of them was Mrs. Motiyaniben and it was noticed that they are occupying the bungalow on the rental basis and the committee had submitted its report to the Department. While dealing with the discreet or conducting preliminary inquiry, certain formalities are bound to be observed. Unless such an inquiry in detail is made, the department would not be able to cite even proper witnesses in the proceedings. As per example, very Mrs. Motiyaniben, if found closely related to respondent no. 2, than her say

may help the department in the proceedings. The department can take decision whether she should be cited as witness. If every family members of complainant-respondent no. 2 found present in the house than those facts also can either help to the department or to the complainant. The visit of the petitioners, therefore, cannot be said to be an illegal act, or their gesture to enter the house for such inquiry prima-facie cannot be said to be an entry with criminal intention to commit house trespass. As per Mr. Prachchak one of the lady present in the house was real sister of the complainant and second lady present in the house was the mother of friend of the complainant.

It is not contended positively that though the members present were ready to cooperate the visiting officers. So far as alleged misbehavior with the persons present in the house is concerned, Mr. Prachchak has submitted that the it was apparent criminal wrong committed by the petitioners and, therefore, the petitioners should be prosecuted and everything should be left to the trial court. It is submitted by Mr. Prachchak that respondent no. 2-original complainant has been victimized being a Union Leader and he has been dismissed from the service at the end of inquiry and the departmental appeal is pending. Mr. Prachchak has also pointed out that the petitioner no. 2- A.P. Lalvani is in habit of misbehaving with the employees of FCI and he has been charge-sheeted in the month of August, 1994 for the offence punishable under sec. 504, 506(1) IPC. It is also submitted that there is one more criminal case of same type against this very AP Lalvani (Petitioner no. 2) is pending. This submission and the production of only one document i.e. charge-sheet filed in the month of August, 1994 is irrelevant and legally it cannot be looked into by this Court. It would be illegal for this Court to infer or held that Mr. AP Lalwani is in habit person of misbehaving with employees of FCI merely because he is a Assistant Manager, Personnel & Industrial Relations. In the present case, the Assistant Manager, Vigilance was also present and there is ample justification on record of their presence at Bhuj and Bungalow no. 107-A. With a view to conduct reasonably good first inquiry, the officers who have been entrusted with the said work by the management, they have to do the work in a better way and for that they may even have to touch some utensils or articles lying in the house. Private panchnama also can be drawn for the purpose. Previous intimation in such cases to the employees may tempt them to destroy the evidence apparent, or to make appropriate changes in situation. As per example, in the

present case, if the respondent no. 2-complainant would have been informed by the department, than it would have become very easy for the complainant to put a nameplate of any third person or of Mr. Dhruva on the bungalow and a Chokidar. The complainant, in such at case, could have ably prevented the petitioners from entering the bungalow. The employees against whom such inquiries have been instituted are not happy as to some of the method adopted by the department, mostly when they are fishing inquiries. But question is whether one can convert his personal annoyance or displeasure into a criminal case.

Where misuse of court process is specifically pleaded on positive averments and on certain undisputed facts, the plain averments in the complaint and papers of inquiry or investigation can be gone into, without evaluating or shifting the evidence to find out whether satisfying ingredient of criminal offence is available on record. This court can closely read the papers placed by prosecution otherwise no substantial justice can be offered. When trial court, by not accepting police report decides to issue process, this court cannot appreciate that decision as appellate forum while exercising inherent powers u/s. 482 of CrPC. Shifting of evidence is also not permissible. But in reference to the case pleaded by the petitioner, this Court can and has to appreciate all relevant pleas and should see that misuse of court process if intended is prevented. Right from the case of R.P. Kapur v. State of Punjab, AIR 1960 SC 866: (1960 Cr.LJ 1239), the Apex Court has held that revisional or inherent powers for quashing the proceedings at the initial stage should be exercised only where the allegations made in the complaint or the first information report, even if taken at their face value and accepted in their entirely, do not prima facie disclose the commission of an offence or where the uncontroverted allegations made in the FIR or complaint and the evidence relied in support of the same do not disclose the commission of any offence against the accused, or the allegations are so absurd and inherently improper that on the basis of which no prudent person could have reached a just conclusion that there were sufficient grounds in proceeding against the accused or where there is an express legal bar engrafted in any provisions of the Code or any other statute to the institution and continuance of the criminal proceedings or where a criminal proceeding is manifestly actuated with malafide and has been initiated maliciously with the ulterior motive for wrecking vengeance on the accused and with a view to spite him due to private and personal grudge. On facts, case on hand is of the type where at the initial stage

this Court should exercise its powers.

In the present case, Ld. Magistrate ought to have accepted the B-Summary report. Normally, the B-summary reports are filed with further prayer of prosecution of the complainant, but in the present case, the Investigating Officer had not prayed for that, so the B-Summary report filed by the Investigating Officer was summary report simpliciter without prosecution. The act of issuance of process against the petitioners shall have to be turned down and the complaint is required to be turned down.

During the course of submissions, Mr. Prachchak has pointed out that permission to sale the bungalow was once asked by the respondent no. 2 as averred in the affidavit-in-reply (page 28) and the same was turned down by petitioner no. 2 Mr. AP Lalvani when he was In-charge of Assistant Manager (Administration), but subsequently, regular Assistant Manager (Administration) had granted permission to sale the bungalow. This fact being not relevant to the present issue before this Court, it would not be proper for this Court to pass any comments qua this submission made by respondent no. 2 complainant in the affidavit-in-reply otherwise the comments of this Court may cause prejudice to respondent no. 2-complainant.

In the result, this criminal misc. application is allowed. The Criminal Complaint filed by complainant-respondent no. 2 herein and the proceedings of criminal case being M. Case No. 20/94 pending in the Court of Ld. J.M.F.C., Kutchh at Bhuj are hereby quashed and set aside. Rule is made absolute accordingly. DS Permitted.

(C.K. BUCH, J.)
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